



Reprinted
February 21, 2003

HOUSE BILL No. 1653

DIGEST OF HB 1653 (Updated February 20, 2003 11:42 AM - DI 108)

Citations Affected: IC 26-1; IC 28-1; IC 28-6.1; IC 28-10; IC 28-13; IC 28-15.

Synopsis: Financial institutions. Allows a bank to sell life insurance or an annuity issued by a life insurance company in any state in which the bank operates. Specifies requirements for an Indiana bank that sells life insurance or annuities. Changes the requirements for filing a statement of condition by a bank. Prohibits a savings bank or savings association acting as a fiduciary from receiving a commission or profit as part of a transaction involving an estate, guardianship, or trust. Creates an exception to the requirement that a director of a state chartered financial institution be a citizen of the United States. Defines language used in conjunction with the termination of a security interest.

Effective: January 1, 2003 (retroactive); upon passage; July 1, 2003.

Bardon, Burton, LaPlante

January 21, 2003, read first time and referred to Committee on Financial Institutions.
February 17, 2003, amended, reported — Do Pass.
February 20, 2003, read second time, amended, ordered engrossed.

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HB 1653—LS 7631/DI 105+



First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1653

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 26-1-9.1-102.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2003]: **Sec. 102.5. As used in this chapter,**
4 **"take free", "takes free", "takes the money free", and "takes the**
5 **funds free", when used in conjunction with a security interest in**
6 **collateral which is transferred, means that following the transfer**
7 **the collateral is no longer encumbered by the security interest and**
8 **the security interest is terminated with respect to the transferred**
9 **collateral.**
- 10 SECTION 2. IC 28-1-11-2.5, AS AMENDED BY P.L.130-2002,
11 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2003]: Sec. 2.5. (a) A bank or trust company may act as an
13 agent for the sale of any life insurance policy or annuity contract issued
14 by a life insurance company ~~(as defined in IC 27-1-2-3)~~ authorized to
15 do business in ~~Indiana under IC 27-1-~~ **any state in which the agent**
16 **operates.**
- 17 (b) A bank or trust company that acts as an agent for the sale of a

HB 1653—LS 7631/DI 105+



1 life insurance policy or an annuity contract **in Indiana:**

2 (1) is subject to all requirements of IC 27; and

3 (2) must comply with the disclosure requirements under
4 IC 27-1-38.

5 (c) A bank or trust company may not condition:

6 (1) an extension of credit;

7 (2) a lease or sale of real or personal property;

8 (3) the performance of services; or

9 (4) the amount charged for:

10 (A) extending credit;

11 (B) leasing or selling real or personal property; or

12 (C) performing services;

13 upon a person's purchase of a life insurance policy or an annuity
14 contract from the bank or trust company or an affiliate (as defined in
15 IC 28-2-13-3) of the bank or trust company.

16 (d) This section does not prohibit a bank or trust company from
17 requiring that a person, as a condition to a transaction, obtain a life
18 insurance policy from an insurance company acceptable to the bank or
19 trust company.

20 SECTION 3. IC 28-1-11-4 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Except as
22 otherwise provided in this article, the business of dealing in investment
23 securities by any bank or trust company is limited to purchasing and
24 selling securities without recourse, solely upon the order and for the
25 account of customers and in no event for its own account. A bank or
26 trust company may not underwrite or guarantee all or any part of any
27 issue of securities other than obligations issued or guaranteed by or on
28 behalf of the state or any political subdivision of the state or any agency
29 or instrumentality of either. A bank or trust company may purchase for
30 its own account and sell investment securities under such limitations
31 and restrictions as the department prescribes by rule, but in no event
32 may the total amount of the investment securities of any one (1) obligor
33 or maker, purchased or held by a bank or trust company for its own
34 account, exceed at any time ten percent (10%) of the amount of the
35 total equity capital of the bank or trust company. The limitations
36 imposed by this section do not apply to the direct or indirect obligations
37 of the United States or the direct obligations of a United States territory
38 or insular possession or of the state of Indiana or any municipal
39 corporation or taxing district in Indiana. A bank or trust company may
40 purchase for its own account and sell shares of stock in federal or state
41 chartered small business investment companies that have received a
42 permit or license to operate under the federal Small Business

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Investment Act (15 U.S.C. 681). However, a bank or trust company may not acquire shares in any small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed five percent (5%) of its total equity capital.

(b) A bank or trust company may purchase for its own account and sell:

(1) shares of open-end investment companies the portfolios of which consist solely of securities that are eligible for purchase and sale by national banking associations; and

(2) **collateralized** obligations ~~commonly known as collateralized mortgage obligations~~, that are eligible for purchase and sale by national banking associations. However, a bank or trust company may purchase for its own account and sell the obligations only to the extent that a national banking association can purchase and sell those obligations.

(c) A bank or trust company may deposit its funds in:

(1) a federally chartered savings association; or

(2) a savings association or other entity organized and operated according to federal law or the laws of any state or the District of Columbia;

the accounts of which are insured by the Saving Association Insurance Fund of the Federal Deposit Insurance Corporation.

(d) A bank or trust company may not purchase for its own account any bond, note, or other evidence of indebtedness that is commonly designated as a security that is speculative in character or that has speculative characteristics. For the purposes of this subsection, a security is speculative or has speculative characteristics if at the time of purchase the security:

(1) is rated below the first four (4) rating classes by a generally recognized security rating service; or

(2) is in default.

(e) A bank or trust company may purchase for its own account a security that is not rated by a generally recognized security rating service if the bank or trust company at the time of purchase obtains financial information that is adequate to document the investment quality of the security.

(f) Except as otherwise authorized by this title, a bank or trust company may not purchase any share of stock of a corporation that is not a subsidiary of that bank or trust company unless the purchase is considered expedient to prevent loss from a debt previously contracted in good faith. Any shares of stock thus acquired by a bank or trust

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company that would not have been eligible for purchase shall be sold and disposed of within six (6) months from the date of acquisition unless the director grants an extension of time for the sale and disposition.

(g) Notwithstanding any other provision of this article, a bank or trust company may purchase for its own account shares of stock of a banker's bank insured by the Bank Insurance Fund of the Federal Deposit Insurance Corporation or a holding company that owns or controls a banker's bank insured by the Bank Insurance Fund of the Federal Deposit Insurance Corporation. For the purposes of this subsection, a "banker's bank" is a bank (as defined in IC 28-2-14-2):

(1) the stock of which is owned exclusively by other banks (as defined in IC 28-2-14-2), or by a bank holding company the stock of which is owned exclusively by other banks (as defined in IC 28-2-14-2); and

(2) that is engaged exclusively in providing services to other banks (as defined in IC 28-2-14-2), and to their officers, directors, and employees.

A bank's or trust company's holdings of the stock of an insured banker's bank or of a holding company that owns or controls an insured banker's bank may not exceed ten percent (10%) of the capital and surplus of the bank or trust company. A bank or trust company may not purchase the stock of an insured banker's bank or of a holding company that owns or controls an insured banker's bank if, after the purchase, the bank or trust company would own more than five percent (5%) of any class of voting securities of the banker's bank or holding company.

(h) Notwithstanding any other provision of this article, a bank or trust company may invest in a casualty insurance company organized solely for the purpose of insuring banks, trust companies, and bank holding companies and their officers and directors from and against liabilities, including those covered by bankers' blanket bonds and director and officer liability insurance and other public liability insurance. The investment must take the form of:

(1) the purchase for the bank's or trust company's own account of shares of stock of the casualty insurance company or shares of stock of an association of banks organized for the purpose of funding the casualty insurance company; or

(2) loans to such an association of banks.

The total investment of any bank or trust company under this subsection may not exceed five percent (5%) of the capital and surplus of the bank or trust company.

(i) Any bank or trust company may establish or acquire a subsidiary

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that engages in:

(1) the sale, distribution, or underwriting of securities issued by investment companies (as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3); or

(2) the underwriting or distribution of securities backed by or representing an interest in mortgages.

(j) As used in this section, "total equity capital" means unimpaired capital stock, unimpaired surplus, unimpaired undivided profits, subordinated debt that has been approved by the state or federal regulatory agencies, and one hundred percent (100%) of loan reserves.

(k) The department may define an investment security by department policy or by rule.

(l) A bank or trust company may establish a trading account for the purchase and resale of securities that are otherwise eligible for purchase or resale by the bank or trust company. The trading account must comply with the requirements established by policy or rule of the department.

(m) A bank or trust company that purchases a security for its own account shall maintain sufficient records of the security to allow the security to be properly identified by the department for examination purposes.

SECTION 4. IC 28-1-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. ~~(a)~~ The department may require every bank and trust company to prepare, submit and publish as many statements of condition as may be deemed necessary, in any year, but not less than as many as are called for from and required to be published by the national banks by the comptroller of the currency of the United States, unless the comptroller of the currency shall call for more than two ~~(2)~~ such **four (4)** statements during any year. Such statements of condition shall be verified and shall be prepared and submitted according to the forms and pursuant to such notice and on such dates as the department may designate. ~~In addition to such other information as the department, under its general rules and regulations, shall require banks and trust companies to submit in their statements of condition, the following items shall be exhibited in detail and under appropriate heads, and as of a day certain, specified by the department in its notice:~~

~~(1) The resources and liabilities of such bank or trust company; and, except as provided in item (2) of this subsection, excluding therefrom all other property held in trust.~~

~~(2) The uninvested funds held in any fiduciary capacity. Such uninvested funds shall be denominated "first lien trust funds."~~



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(3) All shares of affiliated companies which are carried as assets.

(4) All loans to affiliated companies which are carried as assets.

(b) The items enumerated in subsections (2), (3) and (4) of this section shall be segregated from the statement of resources and liabilities of such bank or trust company under such appropriate title as will clearly designate their character and amount to the public.

SECTION 5. IC 28-6.1-6-22.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 22.5. (a) Except for interest at the legal rate on a loan or advancement, a savings bank may not, directly or indirectly, receive a profit or commission from the sale to or purchase from an estate, a guardianship, or a trust of which the savings bank is the fiduciary unless the profit or commission is authorized by agreement with the creator of the trust or a court with jurisdiction over the estate, guardianship, or trust.**

(b) A savings bank that receives a profit or commission in violation of subsection (a) shall be surcharged an amount equal to the profit or commission. In addition, a court with jurisdiction over the estate, guardianship, or trust may remove the savings bank as the fiduciary.

SECTION 6. IC 28-10-1-1, AS AMENDED BY P.L.82-2002, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003 (RETROACTIVE)]: Sec. 1. A reference to a federal law or federal regulation in IC 28 is a reference to the law or regulation in effect January 1, ~~2002~~ **2003**.

SECTION 7. IC 28-13-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) **Except as provided in subsection (c)**, every director must, during the director's whole term of service, be a citizen of the United States. A director must be at least eighteen (18) years of age. At least three-fifths (3/5) of the directors must reside in Indiana or within a distance of not to exceed fifty (50) miles of any office of the corporation of which the director is a director.

(b) The articles of incorporation or bylaws may prescribe other qualifications for directors. A director need not be a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

(c) The director of the department may waive the United States citizenship requirement set forth in subsection (a) for a particular corporation if the waiver would affect only a minority of the total number of directors of the corporation.

SECTION 8. IC 28-15-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2003]: Sec. 1.5. (a) Except for interest at the legal rate on a loan or advancement, a savings association may not, directly or indirectly, receive a profit or commission from the sale to or purchase from an estate, a guardianship, or a trust of which the savings association is the fiduciary unless the profit or commission is authorized by agreement with the creator of the trust or a court with jurisdiction over the estate, guardianship, or trust.

(b) A savings association that receives a profit or commission in violation of subsection (a) shall be surcharged an amount equal to the profit or commission. In addition, a court with jurisdiction over the estate, guardianship, or trust may remove the savings association as the fiduciary.

SECTION 9. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1653, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 6, between lines 16 and 17, begin a new paragraph and insert:

"SECTION 6. IC 28-13-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) **Except as provided in subsection (c)**, every director must, during the director's whole term of service, be a citizen of the United States. A director must be at least eighteen (18) years of age. At least three-fifths (3/5) of the directors must reside in Indiana or within a distance of not to exceed fifty (50) miles of any office of the corporation of which the director is a director.

(b) The articles of incorporation or bylaws may prescribe other qualifications for directors. A director need not be a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

(c) The director of the department may waive the United States citizenship requirement set forth in subsection (a) for a particular corporation if the waiver would affect only a minority of the total number of directors of the corporation."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1653 as introduced.)

BARDON, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1653 be amended to read as follows:

Page 1, between the enacting clause and line one, begin a new paragraph and insert:

"SECTION 1. IC 26-1-9.1-102.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2003]: **Sec. 102.5. As used in this chapter, "take free", takes free", "takes the money free", and "takes the funds free", when used in conjunction with a security interest in collateral which is transferred, means that following the transfer the collateral is no longer encumbered by the security interest and the security interest is terminated with respect to the transferred collateral."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1653 as introduced.)

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